

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

TERESA H.,

Plaintiff,

CASE NO. C18-5711-MAT

V.

ANDREW M. SAUL,  
Commissioner of Social Security,<sup>1</sup>

Defendant.

**ORDER RE: SOCIAL SECURITY  
DISABILITY APPEAL**

Plaintiff proceeds through counsel in her appeal of a final decision of the Commissioner of Social Security Administration (Commissioner). The Commissioner denied Plaintiff's application for Disability Insurance Benefits (DIB) after a hearing before an Administrative Law Judge (ALJ). Having considered the ALJ's decision, the administrative record (AR), and all memoranda of record, this matter is AFFIRMED.

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<sup>1</sup> Andrew M. Saul is now the Commissioner of the Social Security Administration. Pursuant to Federal Rule of Civil Procedure 25(d), Andrew M. Saul is substituted for Nancy A. Berryhill as defendant in this suit.

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## FACTS AND PROCEDURAL HISTORY

Plaintiff was born on XXXX, 1963.<sup>2</sup> She has two years of college education, and previously worked as a retail store assistant manager, cashier, driver, plastic factory molding operator, certified nursing assistant, and community support manager at a long-term care facility. (AR 67, 239, 255.)

Plaintiff applied for DIB in December 2015. (AR 218-19.) That application was denied and Plaintiff timely requested a hearing. (AR 131-33, 138-46.)

8 On April 4, 2017, ALJ David Johnson held a hearing, taking testimony from Plaintiff and  
9 a vocational expert. (AR 62-110.) On July 21, 2017, the ALJ issued a decision finding Plaintiff  
10 not disabled. (AR 26-52.) Plaintiff timely appealed. The Appeals Council denied Plaintiff's  
11 request for review on July 2, 2018 (AR 1-7), making the ALJ's decision the final decision of the  
12 Commissioner. Plaintiff appealed this final decision of the Commissioner to this Court.

## **JURISDICTION**

The Court has jurisdiction to review the ALJ's decision pursuant to 42 U.S.C. § 405(g).

## **DISCUSSION**

16 The Commissioner follows a five-step sequential evaluation process for determining  
17 whether a claimant is disabled. *See* 20 C.F.R. §§ 404.1520, 416.920 (2000). At step one, it must  
18 be determined whether the claimant is gainfully employed. The ALJ found Plaintiff did not engage  
19 in substantial gainful activity during the period between her alleged onset date (April 2, 2009) and  
20 her date last insured (DLI) (June 30, 2013). (AR 28.) At step two, it must be determined whether  
21 a claimant suffers from a severe impairment. The ALJ found that through the DLI, Plaintiff's

<sup>2</sup> Dates of birth must be redacted to the year. Fed. R. Civ. P. 5.2(a)(2) and LCR 5.2(a)(1).

1 cervical sprain, spinal abnormalities, radiculitis, right shoulder sprain, degenerative joint disease,  
2 thoracolumbar sprain, radiculopathy, lupus, fibromyalgia, emphysema/chronic obstructive  
3 pulmonary disease, interstitial lung disease, Raynaud's phenomenon, and bursitis were severe.  
4 (AR 28-30.) Step three asks whether a claimant's impairments meet or equal a listed impairment.  
5 The ALJ found that Plaintiff's impairments did not meet or equal the criteria of a listed impairment.  
6 (AR 30-33.)

7       If a claimant's impairments do not meet or equal a listing, the Commissioner must assess  
8 residual functional capacity (RFC) and determine at step four whether the claimant has  
9 demonstrated an inability to perform past relevant work. The ALJ found that through the DLI,  
10 Plaintiff was capable of performing light work with additional limitations: she could occasionally  
11 stoop, kneel, crouch, crawl, and climb ladders, ropes, or scaffolds. She could frequently climb  
12 ramps or stairs. She could occasionally reach overhead with her right arm. She could not have  
13 concentrated exposure to extreme cold, pulmonary irritants, or hazards. (AR 33.) With that  
14 assessment, the ALJ found Plaintiff able to perform past relevant work as an auto driver, packing  
15 and shipping clerk, cashier II, sales clerk, and social service aide. (AR 49-50.)

16       If a claimant demonstrates an inability to perform past relevant work, the burden shifts to  
17 the Commissioner to demonstrate at step five that the claimant retains the capacity to make an  
18 adjustment to work that exists in significant levels in the national economy. The ALJ proceeded  
19 to step five in the alternative, finding that Plaintiff could perform other representative jobs such as  
20 storage facility rental clerk, small product assembler, mail clerk, semiconductor bonder, and  
21 document preparer. (AR 51-52.)

22       This Court's review of the ALJ's decision is limited to whether the decision is in  
23 accordance with the law and the findings supported by substantial evidence in the record as a

1 whole. *See Penny v. Sullivan*, 2 F.3d 953, 956 (9th Cir. 1993). Substantial evidence means more  
2 than a scintilla, but less than a preponderance; it means such relevant evidence as a reasonable  
3 mind might accept as adequate to support a conclusion. *Magallanes v. Bowen*, 881 F.2d 747, 750  
4 (9th Cir. 1989). If there is more than one rational interpretation, one of which supports the ALJ's  
5 decision, the Court must uphold that decision. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir.  
6 2002).

7 Plaintiff argues the ALJ erred in (1) excluding mental health conditions at step two; (2)  
8 assessing certain medical opinions; and (3) assessing her RFC.<sup>3</sup> The Commissioner argues that  
9 the ALJ's decision is supported by substantial evidence and should be affirmed.

10 Step two

11 At step two, a claimant must make a threshold showing that her medically determinable  
12 impairments significantly limit her ability to perform basic work activities. *See Bowen v. Yuckert*,  
13 482 U.S. 137, 145 (1987); 20 C.F.R. §§ 404.1520(c), 416.920(c). A medically determinable  
14 impairment results from anatomical, physiological, or psychological abnormalities that can be  
15 shown by medically acceptable clinical and laboratory diagnostic techniques, and established by  
16 medical evidence consisting of signs, symptoms, and laboratory findings, not only by a statement  
17 of symptoms. 20 C.F.R. § 404.1521. “Basic work activities” refers to “the abilities and aptitudes  
18 necessary to do most jobs.” 20 C.F.R. §§ 404.1522(b), 416.922(b). “An impairment or  
19 combination of impairments can be found ‘not severe’ only if the evidence establishes a slight  
20 abnormality that has ‘no more than a minimal effect on an individual’s ability to work.’” *Smolen*  
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<sup>3</sup> Plaintiff's opening brief also challenges the ALJ's step-four findings and the sufficiency of the  
23 evidence, but in doing so either only reiterates arguments made elsewhere or fails to identify an error with  
specificity. Dkt. 12 at 15-16. Accordingly, these issues will not be analyzed separately.

1 *v. Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996) (quoting Social Security Ruling 85-28). “[T]he step  
2 two inquiry is a de minimis screening device to dispose of groundless claims.” *Id.* (citing *Bowen*,  
3 482 U.S. at 153-54). An ALJ is also required to consider the “combined effect” of an individual’s  
4 impairments in considering severity. *Id.* A diagnosis alone is not sufficient to establish a severe  
5 impairment. Instead, a claimant must show his medically determinable impairments are severe.  
6 20 C.F.R. §§ 404.1521, 416.921.

7 In this case, the ALJ found that Plaintiff’s post-traumatic stress disorder (PTSD) had not  
8 been diagnosed by an acceptable medical source, and thus was not medically determinable. (AR  
9 29.) The ALJ also found that Plaintiff’s anxiety and depression were medically determinable, but  
10 not severe because they did not cause limitations that were any more than mild. (AR 29-30.)  
11 Plaintiff argues that the ALJ erred in excluding PTSD, depression, and anxiety at step two. Dkt.  
12 12 at 5-10.

13 As to PTSD, Plaintiff notes that the ALJ emphasized that this condition was not diagnosed  
14 by an acceptable medical source. Dkt. 12 at 5. Plaintiff does not dispute this finding or explain  
15 how this finding was erroneous. Accordingly, the Court finds that the ALJ properly excluded  
16 PTSD at step two. *See* 20 C.F.R. § 404.1521 (“Therefore, a physical or mental impairment must  
17 be established by objective medical evidence from an acceptable medical source.”).

18 Likewise, the remainder of Plaintiff’s brief on the step-two allegations do not show error  
19 in the ALJ’s decision. Plaintiff points to several parts of the record, none of which establish that  
20 her mental conditions caused functional limitations prior to the DLI more severe than found by the  
21 ALJ: in fact, they do not identify any particular functional limitations at all. Dkt. 12 at 5-10 (citing  
22 AR 834, 1083-92, 2258-62). The ALJ entered detailed findings regarding Plaintiff’s functioning  
23 in the four “paragraph B” domains, and Plaintiff has not shown that any of those findings are

1 erroneous. (AR 29-30.) Plaintiff urges this Court to interpret the mental examinations to support  
2 her contentions, but this Court will not re-weigh the evidence. Because Plaintiff has failed to meet  
3 her burden to show error in the ALJ's step-two findings, this portion of the ALJ's decision is  
4 affirmed.

5 Medical evidence

6 Plaintiff alleges that the ALJ erred in assessing the medical evidence pertaining to her  
7 physical and mental conditions, and the Court will consider each argument in turn.

8 Legal standards

9 In general, more weight should be given to the opinion of a treating physician than to a  
10 non-treating physician, and more weight to the opinion of an examining physician than to a non-  
11 examining physician. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996). Where not contradicted  
12 by another physician, a treating or examining physician's opinion may be rejected only for "clear  
13 and convincing" reasons. *Id.* (quoting *Baxter v. Sullivan*, 923 F.2d 1391, 1396 (9th Cir. 1991)).  
14 Where contradicted, a treating or examining physician's opinion may not be rejected without  
15 "specific and legitimate reasons" supported by substantial evidence in the record for so doing."  
16 *Id.* at 830-31 (quoting *Murray v. Heckler*, 722 F.2d 499, 502 (9th Cir. 1983)). The ALJ may reject  
17 physicians' opinions "by setting out a detailed and thorough summary of the facts and conflicting  
18 clinical evidence, stating his interpretation thereof, and making findings." *Reddick v. Chater*, 157  
19 F.3d 715, 725 (9th Cir. 1998) (citing *Magallanes*, 881 F.2d at 751). Rather than merely stating  
20 her conclusions, the ALJ "must set forth [her] own interpretations and explain why they, rather  
21 than the doctors', are correct." *Id.* (citing *Embrey v. Bowen*, 849 F.2d 418, 421-22 (9th Cir. 1988)).

22 Physical impairments

23 Plaintiff notes that the ALJ focused on the paucity of abnormal objective findings in the

1 medical evidence. Dkt. 12 at 10-11 (referencing AR 35-45, 47-49). Plaintiff points to certain  
2 objective findings (Dkt. 12 at 11 (citing AR 574, 575, 581, 582, 596, 616)), but fails to  
3 acknowledge that the ALJ mentioned those findings as well, and that he found that those abnormal  
4 findings were minimal in the context of the record, and were undermined by Plaintiff's inconsistent  
5 responses upon examination. (AR 35-37.) Although Plaintiff interprets the evidence differently,  
6 she has not shown that the ALJ's assessment was unreasonable and has therefore failed to establish  
7 error in the ALJ's decision. *See Morgan v. Comm'r of Social Sec. Admin.*, 169 F.3d 595, 599 (9th  
8 Cir. 1999) ("Where the evidence is susceptible to more than one rational interpretation, it is the  
9 ALJ's conclusion that must be upheld.").

10 Plaintiff's brief next addresses a few of the many medical opinions in this record. Dkt. 12  
11 at 11-13. Plaintiff's alternate interpretation of these opinions does not establish error in the ALJ's  
12 assessment of these opinions. Although Plaintiff notes that some of the discounted opinions  
13 mention objective findings, the ALJ acknowledged those objective findings and found them to be  
14 minimal and contradicted by other examination results. (AR 35-37.) Plaintiff also emphasizes  
15 that her treating chiropractor cited objective findings, but does not acknowledge that the ALJ cited  
16 objective findings inconsistent with the chiropractor's findings, which is a specific, legitimate  
17 reason to discount the chiropractor's opinion. *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir.  
18 2008) (inconsistency with the record properly considered by ALJ in rejection of physician's  
19 opinions). Furthermore, the ALJ did not err in noting the chiropractor's status as a non-acceptable  
20 medical source. *See Turner v. Comm'r of Social Sec. Admin.*, 613 F.3d 1217, 1223-24 (9th Cir.  
21 2010); *Hubble v. Astrue*, 467 Fed. Appx. 675, 676-77 (9th Cir. Jan. 30, 2012) ("The ALJ is entitled  
22 to give greater weight to opinions from 'acceptable medical sources' . . .). That the ALJ credited  
23 other opinions that were signed by chiropractors working in concert with physicians does not

1 create an internal inconsistency with the ALJ's finding that opinions authored by a chiropractor  
2 alone were entitled to less weight. (See AR 39-40, 41-42.)

3 Lupus & fibromyalgia

4 Plaintiff argues that the ALJ's decision fails to account for limitations caused by her lupus  
5 and fibromyalgia. Dkt. 12 at 13. Plaintiff states that "the possibility exists that [she] exhibited  
6 symptoms for years prior to her formal [lupus and fibromyalgia] diagnoses" in early 2013. *Id.*  
7 This contention fails to identify any evidence in the record indicating that Plaintiff actually had  
8 any limitations caused by these conditions prior to the DLI that were not accounted for in the RFC  
9 assessment; raising the mere "possibility" that she had more severe limitations does not show that  
10 the ALJ erred. *See Valentine v. Comm'r of Social Sec. Admin.*, 574 F.3d 685, 692 n.2 (9th Cir.  
11 2009) ("Valentine does not detail what other physical limitations follow from the evidence of his  
12 knee and should[er] injuries, besides the limitations already listed in the RFC. We reject any  
13 invitation to find that the ALJ failed to account for Valentine's injuries in some unspecified way.").  
14 Plaintiff has not met her burden to show that the ALJ improperly excluded limitations caused by  
15 lupus or fibromyalgia.

16 Mental impairments

17 Plaintiff reiterates arguments made with respect to step two to contend that she had mental  
18 limitations that should have been included in the RFC assessment. Dkt. 12 at 14. Plaintiff does  
19 not point to any evidence outlining any functional limitations, however. *Id.* Therefore, Plaintiff  
20 has not shown that the ALJ erred in failing to include mental limitations in the RFC assessment.

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**CONCLUSION**

2 For the reasons set forth above, this matter is AFFIRMED.

3 DATED this 18th day of June, 2019.

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Mary Alice Theiler  
6 United States Magistrate Judge